

## Town Council Meeting: 09 May 2005



Town of Garrett Park  
PO Box 84  
4600 Waverly Avenue  
Garrett Park, MD 20896

Regular Meeting of Town Council  
Garrett Park Town Hall  
10814 Kenilworth Avenue  
Garrett Park, MD 20896

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### MINUTES

**Call to Order:** Mayor Shawaker called the meeting to order at 8:05 p.m. Present were Councilmembers Altar, Benjamin, Bennett, Soltan, and Wegner, as well as Town Administrator Pratt, reporters from the *Bugle* and the *Gazette*, and a number of Town residents.

**Approval of Agenda:** Councilmember Benjamin **MOVED**

That two items: use of emails and procurement be added to the agenda under Action/Discussion. The motion was seconded by Councilmember Wegner and **PASSED** unanimously.

**Presentations by Citizens:** Citizens Association Co-president Gene Brantly made a few announcements regarding Association activity.

**Mayor's Report:** Mayor Shawaker reported that the Town had received a further \$2,500 grant in support of the Archives from the Cove Charitable Trust of Boston.

**Councilmember's Reports:**

- Councilmember Wegner:
  - o A sinkhole has formed to the rear of 10915 Montrose. The Town Administrator has been authorized to hire Busy Service, Inc. to scope the Montrose/Clermont drain to check if it has caused the sinkhole.
  - o There are some adjustments needed to the improperly installed sidewalk along Knowles Ave., and a letter has been sent the SHA asking them to review and correct this.
  - o There will be a project walk-through with SHA officials on Friday, 5/20 to review the Knowles sidewalk and the improper panes of glass in the streetlights, among other things.
  - o The Town streetlight project punch list was to be finished today, 5/9.

**Approval of Minutes:** Action on the minutes for the Council Meeting on 04/11/05 was deferred to give Councilmembers time to submit corrections.

**Action/Discussion**

- Continued Variance Hearing: 11122 Rokeby Ave – Frevert: Mayor Shawaker called the continued hearing to order at 8:20 pm. Councilmember Altar summarized the Setback Advisory Committee report: three members felt it was appropriate to grant the variance, one member opposed because of the approximately 2-foot encroachment in the back. Mayor Shawaker stated that the minority report was based on the fact that location on the lot was not felt by one member to be an exceptional circumstance. Councilmember Altar agreed to the nature of the minority position and noted that the minority report further stated concern for the precedent the variance might establish. He went on to state that his personal view, after visiting the property and speaking with the applicant, was that the change in the design submitted by the applicant since the previous meeting has significantly reduced the encroachment, that the house was in a very unusual location in the very rear corner of the lot, and that the applicant had very little room to maneuver, thereby establishing a special circumstance which warranted granting the variance. Two other members of the committee, Harry Gordon and Donn Mader, agreed with him, Ed Shawaker was opposed.

Councilmember Bennett asked at what point did an intrusion become significant enough to deny a variance. Councilmember Altar pointed out that the neighbors most directly affected supported the granting of the variance and that the Council needed to review variances on a case-by-case basis. Councilmember Bennett stated that what the ordinance states should be the basis for the Council's decision, not what the neighbors might feel. There was discussion of Section 402 and the Setback Committee's discussions.

Councilmember Benjamin **MOVED**

That the Council grant the variance on the basis that: 1) consistent with section 403 (c) (1.1), which permits a variance if due to the unusual dimensions, shape, topography, or other exception characteristics of the lot, the lot cannot accommodate the building to be erected and would result in peculiar or unusual practical difficulties to the owner, the unusual location of the house at the corner of the lot makes additions at the rear difficult to do; and consistent with section 403 (c) (1.2.5) which establishes the criterion for a variance that approval of relief will be in harmony with the general purposes of the ordinance and will not be contrary to the public interests, 2) the fact that the owners have the ability to build a much larger home or addition without violating any of the rules and without needing a variance by extending toward the front or street side of the lot; but that 3) the owners wish to maintain the historic character of the home and of the lot, consistent with the Town's desire for architectural diversity, open space, and for retaining the type of community that currently exists.

Councilmember Soltan seconded the motion.

After discussion Councilmember Soltan **Moved**

That the motion be amended to reflect the unusual broken shape of the back lot line and by adding reference to Section 402 (a) (1) in keeping with the purpose to the motion's third point, which stated that "alterations to buildings in the Town be compatible with the Town's existing scale, natural topography, vegetation, trees, physical setting, and density of development." Part 3 of that motion now to read "...3) the owners wish to maintain the historic character of the home and of the lot, consistent with Section 402 (a) (1) and with the Town's desire for architectural diversity, open space, and for retaining the type of community that currently exists.

Councilmember Benjamin **ACCEPTED** the amendment to his motion as a friendly amendment and the motion was so amended.

Councilmember Bennett asked that if the Council allows the location of a house on the lot to be considered a special circumstance for this application, on what basis will the Council be able to deny a variance to future applicants who make a similar claim. Resident Bob Reinhardt stated that the support of the neighbors was an important consideration. Councilmember Benjamin acknowledged the validity of Councilmember Bennett's concern and noted that his motion carefully detailed the specific provisions stated in the ordinance to support the granting of this variance and that future applications could reasonably be found not to meet those provisions and therefore could be denied. Councilmember Altar noted the minimal size of the proposed addition in the application before the Council, and that if the Council granted the variance in this case, a future application with a significantly larger addition would not necessarily meet the provisions of the ordinance. Councilmember Soltan pointed out that the motion made a principled argument for granting the variance based on the ordinance, and therefore the decision was not being made on a case-by-case basis.

Mayor Shawaker asked if the applicants had any comments they wished to make. They noted the amended application and their effort to scale back the extent of the incursion.

Councilmember Bennett stated that he was very concerned that if the Council granted the variance on the basis of the motion before it a precedent would be established that would eviscerate the variance ordinance and make it very difficult for the Council to deny any application for a variance in the future as he did not feel that the location of the house on a lot or the minimal amount of encroachment established special circumstances worthy of a variance.

Councilmember Benjamin read from Section 403(c)(1.1.1)(3) which specifically provided that a finding of hardship or difficulty could not be based upon “the granting of a waiver or variance on other lots,” and stated that this language was specifically included to prevent any one variance being used as a precedent for another. There was further discussion about adding more language to the motion on the floor.

Mayor Shawaker called for a vote on the motion to approve the variance application as amended (attached to these minutes) as amended. The motion **PASSED** with Councilmembers Altar, Benjamin, Soltan, and Wegner voting “Aye,” and Councilmember Bennett voting “Nay.”

- Awarding Contract: Strathmore Retaining Walls – Councilmember Wegner briefed the Council on the bids to apply veneer to the Strathmore/Knowles retaining walls. Both bids received proposed using cultured stone; no bids were received for installing natural stone. He reported that Councilmembers Benjamin and Bennett accompanied him to view an installation by Quality Stone Veneer, the low bidder, and that they were all impressed by what they saw. Councilmember Wegner stated that the Town had a really good option with this product, and that all that remained was to choose a style and color, based upon comments by and the approval of the affected homeowners. It is necessary to obtain a right of entry from each homeowner to do the work, and also to obtain their agreement that they will maintain the walls once they are completed. The Town Attorney should draw up the necessary documents and the Council should then work with the homeowners to choose the style and color. SHA has asked that the Town wait until the project is completed before starting with the installation of the veneer – some time in late June or early July. Councilmember Benjamin stated he was impressed with both the quality of the product and with Quality Stone Veneer’s work as compared to other companies.

Councilmember Benjamin **MOVED**

That this item be tabled until the necessary legal documents have been drawn up and approved by the Council and the homeowners affected. After extended discussion the motion was seconded by Councilmember Wegner and **PASSED** unanimously.

- Reducing Town Speed Limit to 20 MPH – Councilmember Altar noted that the concern with the speed of vehicles in Town dated back to at least 1909. He stated that he has raised this issue because the increased traffic within Town and the need to seek to educate residents about the need to observe speed limits. Councilmember Altar noted that the Town had the authority to set speed limits lower than state or county requirements, and proposed that the Town speed limit currently set in the code of ordinances at 25 MPH be reduced to 20 MPH. After extended discussion it was agreed to continue the effort to develop an ordinance that reduces the speed limit and sets

appropriate penalties as well as to develop an appropriate strategy to educate residents to the need to abide by speed limits within Town.

- Prioritizing FY 2006 Capital Budget – Mayor Shawaker briefed the Council on the draft plans for Park Place, Concepts #1, #1, and #3, prepared for the Council’s review and comment by the Town’s consulting engineers, Ballard Engineering. Councilmember Benjamin suggested that setting capital budget priorities might best be accomplished at a budget work session. There was extended discussion regarding Park Place and Penn Place parking requirements, reviewing the concept plans and preliminary cost estimates. Councilmember Benjamin agreed to speak with the Blacks regarding the relationship of the Black Market to the town.

Mayor Shawaker asked that Councilmembers to consider how set priorities, and that following Councilmember Benjamin’s suggestion; this could be done at a budget workshop.

- Use of Emails – Mayor Shawaker directed the Council’s attention to materials on the open meeting laws and public information act and suggested that this matter also be discussed at the workshop.
- Procurement and Purchasing – Councilmember Benjamin directed the Council’s attention to the existing adopted procurement rules (attached to these minutes). The Mayor asked that the Town Administrator distribute copies of the procurement rules to members of the Council. The Council then discussed when to hold the workshop and agreed to meet on Sunday, May 22<sup>nd</sup> at 8:30 AM in the Town Office.

### **Information**

- Councilmember Altar updated the Council on the Infrastructure Committee meeting that was held on last Thursday evening at Councilmember Altar’s home.

### **Town Administrator Report**

- Town Administrator Pratt asked if there were questions regarding the monthly financial report.
- Town Administrator Pratt indicated he had yet to send out an RFP for a new Town Auditor to replace Bond Beebe, who has resigned. The RFPs will be sent out in the next week.

### **Adjournment:** At 10:10 PM Councilmember Benjamin **MOVED**

That the Council convenes in executive session immediately after the adjournment of the regular meeting. The motion **PASSED** unanimously. The regular meeting was adjourned at 10:15 pm.

**Executive Session**

- To consider the acquisition of real property for a public purpose and matters directly related thereto.

Respectfully submitted,

[ Town Seal ]

Edwin Pratt, Jr., Clerk-Treasurer